

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HOUSE BILL 2326

AN ACT

AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 144, SECTION 1 AND CHAPTER 185, SECTION 1; AMENDING SECTION 38-881, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 144, SECTION 2 AND CHAPTER 185, SECTION 2; AMENDING SECTIONS 38-882, 38-884, 38-885.01, 38-887, 38-888, 38-891, 38-893 AND 38-904, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 38-911 AND 38-912; RELATING TO THE CORRECTIONS OFFICER RETIREMENT PLAN; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-881, Arizona Revised Statutes, as amended by
3 Laws 2008, chapter 144, section 1 and chapter 185, section 1, is amended to
4 read:

5 38-881. Definitions

6 In this article, unless the context otherwise requires:

7 1. "Accidental disability" means a physical or mental condition that
8 the local board finds totally and permanently prevents an employee from
9 performing a reasonable range of duties within the employee's department, was
10 incurred in the performance of the employee's duties and was the result of
11 any of the following:

12 (a) Physical contact with inmates, prisoners, parolees or persons on
13 probation.

14 (b) Responding to a confrontational situation with inmates, prisoners,
15 parolees or persons on probation.

16 (c) A job related motor vehicle accident while on official business
17 for the employee's employer. A job related motor vehicle accident does not
18 include an accident that occurs on the way to or from work. Persons found
19 guilty of violating a personnel rule, a rule established by the employee's
20 employer or a state or federal law in connection with a job related motor
21 vehicle accident do not meet the conditions for accidental disability.

22 2. "Accumulated member contributions" means **FOR EACH MEMBER** the sum of
23 **THE AMOUNT OF** all ~~member~~ **THE MEMBER'S** contributions deducted from ~~a~~ **THE**
24 member's salary and paid to the fund, plus member contributions transferred
25 to the fund by another retirement plan covering public employees of this
26 state, plus previously withdrawn accumulated member contributions that are
27 repaid to the fund in accordance with this article, minus any benefits paid
28 to or on behalf of a member.

29 3. "Alternate payee" means the spouse or former spouse of a
30 participant as designated in a domestic relations order.

31 4. "Alternate payee's portion" means benefits that are payable to an
32 alternate payee pursuant to a plan approved domestic relations order.

33 **5. "ANNUITANT" MEANS A PERSON WHO IS RECEIVING A BENEFIT PURSUANT TO**
34 **SECTION 38-911.**

35 ~~5-~~ **6. "Average monthly salary"** means one-thirty-sixth of the
36 aggregate amount of salary that is paid a member by a participating employer
37 during a period of thirty-six consecutive months of service in which the
38 member received the highest salary within the last one hundred twenty months
39 of service. Average monthly salary means the aggregate amount of salary that
40 is paid a member divided by the member's months of service if the member has
41 less than thirty-six months of service. In the computation under this
42 paragraph, a period of nonpaid or partially paid industrial leave shall be
43 considered based on the salary the employee would have received in the
44 employee's job classification if the employee was not on industrial leave.

1 ~~6-~~ 7. "Beneficiary" means an individual who is being paid or who has
2 entitlement to the future payment of a pension on account of a reason other
3 than the individual's membership in the retirement plan.

4 ~~7-~~ 8. "Claimant" means a member, beneficiary or estate that files an
5 application for benefits with the retirement plan.

6 ~~8-~~ 9. "Credited service" means credited service transferred to the
7 retirement plan from another retirement system or plan for public employees
8 of this state, plus those compensated periods of service as a member of the
9 retirement plan for which member contributions are on deposit in the fund.

10 ~~9-~~ 10. "Cure period" means the ninety-day period in which a
11 participant or alternate payee may submit an amended domestic relations order
12 and request a determination, calculated from the time the plan issues a
13 determination finding that a previously submitted domestic relations order
14 did not qualify as a plan approved domestic relations order.

15 ~~10-~~ 11. "Designated position" means:

16 (a) For a county:

17 (i) A county detention officer.

18 (ii) A nonuniformed employee of a sheriff's department whose primary
19 duties require direct contact with inmates.

20 (b) For the state department of corrections and the department of
21 juvenile corrections, only the following specifically designated positions:

22 (i) Food service.

23 (ii) Nursing personnel.

24 (iii) Corrections physician assistant.

25 (iv) Therapist.

26 (v) Corrections dental assistant.

27 (vi) Hygienist.

28 (vii) Corrections medical assistant.

29 (viii) Correctional service officer, including assistant deputy
30 warden, deputy warden, warden and superintendent.

31 (ix) State correctional program officer.

32 (x) Parole or community supervision officers.

33 (xi) Investigators.

34 (xii) Teachers.

35 (xiii) Institutional maintenance workers.

36 (xiv) Youth corrections officer.

37 (xv) Youth program officer.

38 (xvi) Behavioral health treatment unit managers.

39 (xvii) The director and assistant directors of the department of
40 juvenile corrections and the superintendent of the state educational system
41 for committed youth.

42 (xviii) The director, deputy directors and assistant directors of the
43 state department of corrections.

1 (xix) Other positions designated by the local board of the state
2 department of corrections or the local board of the department of juvenile
3 corrections pursuant to section 38-891.

4 (c) For a city or town, a city or town detention officer.

5 (d) For an employer of an eligible group as defined in section 38-842,
6 full-time dispatchers.

7 (e) For the judiciary, probation, surveillance and juvenile detention
8 officers and those positions designated by the local board of the judiciary
9 pursuant to section 38-891.

10 (f) For the department of public safety, state detention officers.

11 ~~11.~~ 12. "Determination" means a written document that indicates to a
12 participant and alternate payee whether a domestic relations order qualifies
13 as a plan approved domestic relations order.

14 ~~12.~~ 13. "Determination period" means the ninety-day period in which
15 the plan must review a domestic relations order that is submitted by a
16 participant or alternate payee to determine whether the domestic relations
17 order qualifies as a plan approved domestic relations order, calculated from
18 the time the plan mails a notice of receipt to the participant and alternate
19 payee.

20 ~~13.~~ 14. "Domestic relations order" means an order of a court of this
21 state that is made pursuant to the domestic relations laws of this state and
22 that creates or recognizes the existence of an alternate payee's right to, or
23 assigns to an alternate payee the right to, receive a portion of the benefits
24 payable to a participant.

25 15. "ELIGIBLE CHILD" MEANS AN UNMARRIED CHILD OF A DECEASED ACTIVE OR
26 RETIRED MEMBER WHO MEETS ONE OF THE FOLLOWING QUALIFICATIONS:

27 (a) IS UNDER EIGHTEEN YEARS OF AGE.

28 (b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF
29 AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.

30 (c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED
31 TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR
32 GUARDIAN.

33 ~~14.~~ 16. "Employee" means a person ~~determined by the local board to be~~
34 employed by a participating employer in a designated position.

35 ~~15.~~ 17. "Employer" means an agency or department of this state or a
36 political subdivision of this state that has one or more employees in a
37 designated position.

38 ~~16.~~ 18. "Fund" means the corrections officer retirement plan fund.

39 ~~17.~~ 19. "Fund manager" means the fund manager of the public safety
40 personnel retirement system.

41 ~~18.~~ 20. "Juvenile detention officer" means a juvenile detention
42 officer responsible for the direct custodial supervision of juveniles who are
43 detained in a county juvenile detention center.

1 ~~19.~~ 21. "Local board" means the retirement board of the employer that
2 consists of persons appointed or elected to administer the plan as it applies
3 to the employer's members in the plan.

4 ~~20.~~ 22. "Member" means any employee who meets all of the following
5 qualifications:

6 (a) Who is a full-time paid person employed by a participating
7 employer in a designated position.

8 (b) Who is receiving salary for personal services rendered to a
9 participating employer or would be receiving salary except for an authorized
10 leave of absence.

11 (c) Whose customary employment is at least forty hours each week ~~and~~
12 ~~for more than six months in a calendar year.~~

13 ~~21.~~ 23. "Normal retirement date" means the first day of the calendar
14 month immediately following an employee's completion of twenty years of
15 service or, in the case of a dispatcher, twenty-five years of service, the
16 employee's sixty-second birthday and completion of ten years of service or
17 the month in which the sum of the employee's age and years of credited
18 service equals eighty.

19 ~~22.~~ 24. "Notice of receipt" means a written document that is issued by
20 the plan to a participant and alternate payee and that states that the plan
21 has received a domestic relations order and a request for a determination
22 that the domestic relations order is a plan approved domestic relations
23 order.

24 25. "ORDINARY DISABILITY" MEANS A PHYSICAL CONDITION THAT THE LOCAL
25 BOARD DETERMINES WILL TOTALLY AND PERMANENTLY PREVENT AN EMPLOYEE FROM
26 PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE EMPLOYEE'S DEPARTMENT OR A
27 MENTAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL TOTALLY AND PERMANENTLY
28 PREVENT AN EMPLOYEE FROM ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY.

29 ~~23.~~ 26. "Participant" means a member who is subject to a domestic
30 relations order.

31 ~~24.~~ 27. "Participant's portion" means benefits that are payable to a
32 participant pursuant to a plan approved domestic relations order.

33 ~~25.~~ 28. "Participating employer" means an employer that the fund
34 manager has determined to have one or more employees in a designated position
35 or a county, city, town or department of this state that has entered into a
36 joinder agreement pursuant to section 38-902.

37 ~~26.~~ 29. "Pension" means a series of monthly payments by the retirement
38 plan ~~BUT DOES NOT INCLUDE AN ANNUITY THAT IS PAYABLE PURSUANT TO SECTION~~
39 ~~38-911.~~

40 ~~27.~~ 30. "Personal representative" means the personal representative of
41 a deceased alternate payee.

42 ~~28.~~ 31. "Plan approved domestic relations order" means a domestic
43 relations order that the plan approves as meeting all the requirements for a
44 plan approved domestic relations order as otherwise prescribed in this
45 article.

1 ~~29.~~ 32. "Probation or surveillance officer" means an officer appointed
2 pursuant to section 8-203, 12-251 or 12-259 but does not include other
3 personnel, office assistants or support staff.

4 ~~30.~~ 33. "Retired member" means an individual who ~~is being paid a~~
5 ~~pension on account of the individual's membership in the retirement plan~~
6 ~~TERMINATES EMPLOYMENT AND WHO IS RECEIVING A PENSION PURSUANT TO EITHER~~
7 ~~SECTION 38-885 OR 38-886.~~

8 ~~31.~~ 34. "Retirement" ~~OR "RETIRED"~~ means termination of employment
9 after a member has fulfilled all requirements for a pension.

10 ~~32.~~ 35. "Retirement plan" or "plan" means the corrections officer
11 retirement plan established by this article.

12 ~~33.~~ 36. "Salary" means the base salary, shift differential pay and
13 holiday pay paid a member ~~in a designated position~~ for personal services
14 rendered ~~IN A DESIGNATED POSITION~~ to a participating employer on a regular
15 monthly, semimonthly or biweekly payroll basis. Salary includes amounts that
16 are subject to deferred compensation or tax shelter agreements. Salary does
17 not include payment for any remuneration or reimbursement other than as
18 prescribed by this paragraph. For the purposes of this paragraph, "base
19 salary" means the amount of compensation each member is regularly paid for
20 personal services rendered to an employer before the addition of any extra
21 monies, including overtime pay, shift differential pay, holiday pay, fringe
22 benefit pay and similar extra payments.

23 ~~34.~~ 37. "Segregated funds" means the amount of benefits that would
24 currently be payable to an alternate payee pursuant to a domestic relations
25 order under review by the plan, or a domestic relations order submitted to
26 the plan that failed to qualify as a plan approved domestic relations order,
27 if the domestic relations order were determined to be a plan approved
28 domestic relations order.

29 ~~35.~~ 38. "Service" means employment rendered to a participating
30 employer as an employee in a designated position. Any absence that is
31 authorized by an employer, including any periods during which the employee is
32 on an employer sponsored long-term disability program, is considered as
33 service if the employee returns or is deemed by the employer to have returned
34 to a designated position within the period of the authorized absence.

35 ~~36.~~ 39. "Total and permanent disability" means a physical or mental
36 condition that is not an accidental disability, that the local board finds
37 totally and permanently prevents a member from engaging in any gainful
38 employment and that is the direct and proximate result of the member's
39 performance of the member's duty as an employee of a participating employer.

40 Sec. 2. Section 38-881, Arizona Revised Statutes, as amended by Laws
41 2008, chapter 144, section 2 and chapter 185, section 2, is amended to read:

42 38-881. Definitions

43 In this article, unless the context otherwise requires:

44 1. "Accidental disability" means a physical or mental condition that
45 the local board finds totally and permanently prevents an employee from

1 performing a reasonable range of duties within the employee's department, was
2 incurred in the performance of the employee's duties and was the result of
3 any of the following:

4 (a) Physical contact with inmates, prisoners, parolees or persons on
5 probation.

6 (b) Responding to a confrontational situation with inmates, prisoners,
7 parolees or persons on probation.

8 (c) A job related motor vehicle accident while on official business
9 for the employee's employer. A job related motor vehicle accident does not
10 include an accident that occurs on the way to or from work. Persons found
11 guilty of violating a personnel rule, a rule established by the employee's
12 employer or a state or federal law in connection with a job related motor
13 vehicle accident do not meet the conditions for accidental disability.

14 2. "Accumulated member contributions" means ~~FOR EACH MEMBER~~ the sum of
15 ~~THE AMOUNT OF~~ all ~~member~~ ~~THE MEMBER'S~~ contributions deducted from ~~a~~ ~~THE~~
16 member's salary and paid to the fund, plus member contributions transferred
17 to the fund by another retirement plan covering public employees of this
18 state, plus previously withdrawn accumulated member contributions that are
19 repaid to the fund in accordance with this article, minus any benefits paid
20 to or on behalf of a member.

21 3. "Alternate payee" means the spouse or former spouse of a
22 participant as designated in a domestic relations order.

23 4. "Alternate payee's portion" means benefits that are payable to an
24 alternate payee pursuant to a plan approved domestic relations order.

25 5. "ANNUITANT" MEANS A PERSON WHO IS RECEIVING A BENEFIT PURSUANT TO
26 SECTION 38-911.

27 ~~5-~~ 6. "Average monthly salary" means one-thirty-sixth of the
28 aggregate amount of salary that is paid a member by a participating employer
29 during a period of thirty-six consecutive months of service in which the
30 member received the highest salary within the last one hundred twenty months
31 of service. Average monthly salary means the aggregate amount of salary that
32 is paid a member divided by the member's months of service if the member has
33 less than thirty-six months of service. In the computation under this
34 paragraph, a period of nonpaid or partially paid industrial leave shall be
35 considered based on the salary the employee would have received in the
36 employee's job classification if the employee was not on industrial leave.

37 ~~6-~~ 7. "Beneficiary" means an individual who is being paid or who has
38 entitlement to the future payment of a pension on account of a reason other
39 than the individual's membership in the retirement plan.

40 ~~7-~~ 8. "Claimant" means a member, beneficiary or estate that files an
41 application for benefits with the retirement plan.

42 ~~8-~~ 9. "Credited service" means credited service transferred to the
43 retirement plan from another retirement system or plan for public employees
44 of this state, plus those compensated periods of service as a member of the
45 retirement plan for which member contributions are on deposit in the fund.

1 ~~9.~~ 10. "Cure period" means the ninety-day period in which a
2 participant or alternate payee may submit an amended domestic relations order
3 and request a determination, calculated from the time the plan issues a
4 determination finding that a previously submitted domestic relations order
5 did not qualify as a plan approved domestic relations order.

6 ~~10.~~ 11. "Designated position" means:

7 (a) For a county:

8 (i) A county detention officer.

9 (ii) A nonuniformed employee of a sheriff's department whose primary
10 duties require direct contact with inmates.

11 (b) For the state department of corrections and the department of
12 juvenile corrections, only the following specifically designated positions:

13 (i) Food service.

14 (ii) Nursing personnel.

15 (iii) Corrections physician assistant.

16 (iv) Therapist.

17 (v) Corrections dental assistant.

18 (vi) Hygienist.

19 (vii) Corrections medical assistant.

20 (viii) Correctional service officer, including assistant deputy
21 warden, deputy warden, warden and superintendent.

22 (ix) State correctional program officer.

23 (x) Parole or community supervision officers.

24 (xi) Investigators.

25 (xii) Teachers.

26 (xiii) Institutional maintenance workers.

27 (xiv) Youth corrections officer.

28 (xv) Youth program officer.

29 (xvi) Behavioral health treatment unit managers.

30 (xvii) The director and assistant directors of the department of
31 juvenile corrections and the superintendent of the state educational system
32 for committed youth.

33 (xviii) The director, deputy directors and assistant directors of the
34 state department of corrections.

35 (xix) Other positions designated by the local board of the state
36 department of corrections or the local board of the department of juvenile
37 corrections pursuant to section 38-891.

38 (c) For a city or town, a city or town detention officer.

39 (d) For an employer of an eligible group as defined in section 38-842,
40 full-time dispatchers.

41 (e) For the judiciary, probation, surveillance and juvenile detention
42 officers and those positions designated by the local board of the judiciary
43 pursuant to section 38-891.

44 (f) For the department of public safety, state detention officers.

1 ~~11.~~ 12. "Determination" means a written document that indicates to a
2 participant and alternate payee whether a domestic relations order qualifies
3 as a plan approved domestic relations order.

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6 participant or alternate payee to determine whether the domestic relations
7 order qualifies as a plan approved domestic relations order, calculated from
8 the time the plan mails a notice of receipt to the participant and alternate
9 payee.

10 ~~13.~~ 14. "Domestic relations order" means an order of a court of this
11 state that is made pursuant to the domestic relations laws of this state and
12 that creates or recognizes the existence of an alternate payee's right to, or
13 assigns to an alternate payee the right to, receive a portion of the benefits
14 payable to a participant.

15 15. "ELIGIBLE CHILD" MEANS AN UNMARRIED CHILD OF A DECEASED ACTIVE OR
16 RETIRED MEMBER WHO MEETS ONE OF THE FOLLOWING QUALIFICATIONS:

17 (a) IS UNDER EIGHTEEN YEARS OF AGE.

18 (b) IS AT LEAST EIGHTEEN YEARS OF AGE AND UNDER TWENTY-THREE YEARS OF
19 AGE ONLY DURING ANY PERIOD THAT THE CHILD IS A FULL-TIME STUDENT.

20 (c) IS UNDER A DISABILITY THAT BEGAN BEFORE THE CHILD ATTAINED
21 TWENTY-THREE YEARS OF AGE AND REMAINS A DEPENDENT OF THE SURVIVING SPOUSE OR
22 GUARDIAN.

23 ~~14.~~ 16. "Employee" means a person ~~determined by the local board to be~~
24 employed by a participating employer in a designated position.

25 ~~15.~~ 17. "Employer" means an agency or department of this state or a
26 political subdivision of this state that has one or more employees in a
27 designated position.

28 ~~16.~~ 18. "Fund" means the corrections officer retirement plan fund.

29 ~~17.~~ 19. "Fund manager" means the fund manager of the public safety
30 personnel retirement system.

31 ~~18.~~ 20. "Juvenile detention officer" means a detention officer
32 responsible for the direct custodial supervision of juveniles who are
33 detained in a county juvenile detention center.

34 ~~19.~~ 21. "Local board" means the retirement board of the employer that
35 consists of persons appointed or elected to administer the plan as it applies
36 to the employer's members in the plan.

37 ~~20.~~ 22. "Member" means any employee who meets all of the following
38 qualifications:

39 (a) Who is a full-time paid person employed by a participating
40 employer in a designated position.

41 (b) Who is receiving salary for personal services rendered to a
42 participating employer or would be receiving salary except for an authorized
43 leave of absence.

44 (c) Whose customary employment is at least forty hours each week ~~and~~
45 ~~for more than six months in a calendar year.~~

1 ~~21.~~ 23. "Normal retirement date" means the first day of the calendar
2 month immediately following an employee's completion of twenty years of
3 service or, in the case of a dispatcher, twenty-five years of service, the
4 employee's sixty-second birthday and completion of ten years of service or
5 the month in which the sum of the employee's age and years of credited
6 service equals eighty.

7 ~~22.~~ 24. "Notice of receipt" means a written document that is issued by
8 the plan to a participant and alternate payee and that states that the plan
9 has received a domestic relations order and a request for a determination
10 that the domestic relations order is a plan approved domestic relations
11 order.

12 25. "ORDINARY DISABILITY" MEANS A PHYSICAL CONDITION THAT THE LOCAL
13 BOARD DETERMINES WILL TOTALLY AND PERMANENTLY PREVENT AN EMPLOYEE FROM
14 PERFORMING A REASONABLE RANGE OF DUTIES WITHIN THE EMPLOYEE'S DEPARTMENT OR A
15 MENTAL CONDITION THAT THE LOCAL BOARD DETERMINES WILL TOTALLY AND PERMANENTLY
16 PREVENT AN EMPLOYEE FROM ENGAGING IN ANY SUBSTANTIAL GAINFUL ACTIVITY.

17 ~~23.~~ 26. "Participant" means a member who is subject to a domestic
18 relations order.

19 ~~24.~~ 27. "Participant's portion" means benefits that are payable to a
20 participant pursuant to a plan approved domestic relations order.

21 ~~25.~~ 28. "Participating employer" means an employer that the fund
22 manager has determined to have one or more employees in a designated position
23 or a county, city, town or department of this state that has entered into a
24 joinder agreement pursuant to section 38-902.

25 ~~26.~~ 29. "Pension" means a series of monthly payments by the retirement
26 plan BUT DOES NOT INCLUDE AN ANNUITY THAT IS PAYABLE PURSUANT TO SECTION
27 38-911.

28 ~~27.~~ 30. "Personal representative" means the personal representative of
29 a deceased alternate payee.

30 ~~28.~~ 31. "Plan approved domestic relations order" means a domestic
31 relations order that the plan approves as meeting all the requirements for a
32 plan approved domestic relations order as otherwise prescribed in this
33 article.

34 ~~29.~~ 32. "Probation or surveillance officer" means an officer appointed
35 pursuant to section 8-203, 12-251 or 12-259 but does not include other
36 personnel, office assistants or support staff.

37 ~~30.~~ 33. "Retired member" means an individual who ~~is being paid a~~
38 ~~pension on account of the individual's membership in the retirement plan~~
39 TERMINATES EMPLOYMENT AND WHO IS RECEIVING A PENSION PURSUANT TO EITHER
40 SECTION 38-885 OR 38-886.

41 ~~31.~~ 34. "Retirement" OR "RETIRED" means termination of employment
42 after a member has fulfilled all requirements for a pension.

43 ~~32.~~ 35. "Retirement plan" or "plan" means the corrections officer
44 retirement plan established by this article.

1 ~~33-~~ 36. "Salary" means the base salary, overtime pay, shift
2 differential pay and holiday pay paid a member ~~in a designated position~~ for
3 personal services rendered **IN A DESIGNATED POSITION** to a participating
4 employer on a regular monthly, semimonthly or biweekly payroll basis, except
5 that for the purposes of this paragraph the amount of overtime included shall
6 not include payments to the member for the sale of compensatory time. Salary
7 includes amounts that are subject to deferred compensation or tax shelter
8 agreements. Salary does not include payment for any remuneration or
9 reimbursement other than as prescribed by this paragraph. For the purposes
10 of this paragraph, "base salary" means the amount of compensation each member
11 is regularly paid for personal services rendered to an employer before the
12 addition of any extra monies, including overtime pay, shift differential pay,
13 holiday pay, payments for the sale of compensatory time, fringe benefit pay
14 and similar extra payments.

15 ~~34-~~ 37. "Segregated funds" means the amount of benefits that would
16 currently be payable to an alternate payee pursuant to a domestic relations
17 order under review by the plan, or a domestic relations order submitted to
18 the plan that failed to qualify as a plan approved domestic relations order,
19 if the domestic relations order were determined to be a plan approved
20 domestic relations order.

21 ~~35-~~ 38. "Service" means employment rendered to a participating
22 employer as an employee in a designated position. Any absence that is
23 authorized by an employer, including any periods during which the employee is
24 on an employer sponsored long-term disability program, is considered as
25 service if the employee returns or is deemed by the employer to have returned
26 to a designated position within the period of the authorized absence.

27 ~~36-~~ 39. "Total and permanent disability" means a physical or mental
28 condition that is not an accidental disability, that the local board finds
29 totally and permanently prevents a member from engaging in any gainful
30 employment and that is the direct and proximate result of the member's
31 performance of the member's duty as an employee of a participating employer.

32 Sec. 3. Section 38-882, Arizona Revised Statutes, is amended to read:

33 ~~38-882.~~ Corrections officer retirement plan and fund;
34 administration

35 A. The corrections officer retirement plan and the corrections officer
36 retirement plan fund are established.

37 B. The fund consists of the monies and assets generated by the
38 operation of the retirement plan. The fund shall be used exclusively to pay
39 benefits to and on behalf of members and beneficiaries in accordance with the
40 provisions of this article and to pay the administration, operation and
41 investment expenses of the plan and fund. In no case shall all or any
42 portion of the fund revert or otherwise be paid to an employer.

43 C. The fund manager is entitled to administer, manage and operate the
44 plan and fund.

1 D. THE CORRECTIONS OFFICER RETIREMENT PLAN IS A JURAL ENTITY THAT MAY
2 SUE AND BE SUED.

3 Sec. 4. Section 38-884, Arizona Revised Statutes, is amended to read:

4 38-884. Membership of retirement plan; termination; credited
5 service; redemption

6 A. Each employee of a participating employer is a member of the plan.
7 A person employed shall undergo a medical examination performed by a doctor
8 or clinic appointed by the local board or, in the case of a state
9 correctional officer who is employed by the state department of corrections,
10 complete a physical examination pursuant to section 41-1822, subsection B.
11 For the purposes of subsection B of this section, the doctor or clinic
12 appointed by the local board may be the employer's regular employee or
13 contractor.

14 B. The purpose of the medical examination authorized by this section
15 is to identify a member's physical or mental condition or injury that existed
16 or occurred before the member's date of membership in the plan. Any employee
17 who fails or refuses to submit to the medical examination prescribed in this
18 section is deemed to waive all rights to disability benefits under this
19 article. Medical examinations conducted under this article shall not be
20 conducted or used for purposes of hiring, advancement, discharge, job
21 training or other terms, conditions and privileges of employment unrelated to
22 receipt or qualification for pension benefits or service credits from the
23 fund. This subsection does not affect or impair the right of an employer to
24 prescribe medical or physical standards for employees or prospective
25 employees.

26 C. If a member ceases to be an employee for any reason other than
27 death or retirement, within twenty days after filing a completed application
28 with the fund manager, the member is entitled to receive the following
29 amounts, less any benefit payments the member has received and any amount the
30 member may owe to the plan:

31 1. If the member has less than five years of credited service with the
32 plan, the member may withdraw the member's accumulated contributions from the
33 plan.

34 2. If the member has five or more years of credited service with the
35 plan, the member may withdraw the member's accumulated contributions plus an
36 amount equal to the amount determined as follows:

37 (a) 5.0 to 5.9 years of credited service, twenty-five per cent of all
38 member contributions deducted from the member's salary pursuant to section
39 38-891, subsection B.

40 (b) 6.0 to 6.9 years of credited service, forty per cent of all member
41 contributions deducted from the member's salary pursuant to section 38-891,
42 subsection B.

43 (c) 7.0 to 7.9 years of credited service, fifty-five per cent of all
44 member contributions deducted from the member's salary pursuant to section
45 38-891, subsection B.

1 (d) 8.0 to 8.9 years of credited service, seventy per cent of all
2 member contributions deducted from the member's salary pursuant to section
3 38-891, subsection B.

4 (e) 9.0 to 9.9 years of credited service, eighty-five per cent of all
5 member contributions deducted from the member's salary pursuant to section
6 38-891, subsection B.

7 (f) 10.0 or more years of credited service, one hundred per cent of
8 all member contributions deducted from the member's salary pursuant to
9 section 38-891, subsection B.

10 D. If a member has more than ten years of credited service with the
11 plan, leaves the monies prescribed in subsection C of this section on account
12 with the plan for more than thirty days after termination of employment and
13 after that time period requests a refund of those monies, the member is
14 entitled to receive the amount prescribed in subsection C of this section
15 plus interest at a rate determined by the fund manager for each year computed
16 from and after the member's termination of employment.

17 E. If the refund includes monies that are an eligible rollover
18 distribution and the member elects to have the distribution paid directly to
19 an eligible retirement plan or individual retirement account or annuity and
20 specifies the eligible retirement plan or individual retirement account or
21 annuity to which the distribution is to be paid, the distribution shall be
22 made in the form of a direct trustee-to-trustee transfer to the specified
23 eligible retirement plan. The distribution shall be made in the form and at
24 the time prescribed by the fund manager.

25 F. Service shall be credited to a member's individual credited service
26 account in accordance with rules the local board prescribes. In no case
27 shall more than twelve months of credited service be credited on account of
28 all service rendered by a member in any one year. In no case shall service
29 be credited for any period during which the member is not employed in a
30 designated position, except as provided by sections 38-921 and 38-922.

31 G. Credited service is forfeited if the amounts prescribed in
32 subsection C or D of this section are paid or are transferred in accordance
33 with this section.

34 H. If a former member becomes reemployed with the same employer within
35 two years after the former member's termination date, a member may have
36 forfeited credited service attributable to service rendered during a prior
37 period of service as an employee restored on satisfaction of each of the
38 following conditions:

39 1. The member files with the plan a written application for
40 reinstatement of forfeited credited service within ninety days after again
41 becoming an employee.

42 2. The retirement fund is paid the total amount previously withdrawn
43 pursuant to subsection C or D of this section plus compound interest from the
44 date of withdrawal to the dates of repayment. Interest shall be computed at
45 the rate of nine per cent for each year compounded each year from the date of

1 withdrawal to the date of repayment. Forfeited credited service shall not be
2 restored until complete payment is received by the fund.

3 3. The required payment is completed within one year after returning
4 to employee status.

5 I. A present active member of the plan who received a refund of
6 accumulated contributions from the plan pursuant to subsection C or D of this
7 section and forfeited credited service pursuant to subsection G of this
8 section may elect to redeem any part of that forfeited credited service by
9 paying into the plan any amounts required pursuant to this subsection. A
10 present active member who elects to redeem any part of forfeited credited
11 service for which the member is deemed eligible by the fund manager shall pay
12 into the plan the amounts previously paid or transferred as a refund of the
13 member's accumulated contributions plus an amount, computed by the plan's
14 actuary that is necessary to equal the increase in the actuarial present
15 value of projected benefits resulting from the redemption calculated using
16 the actuarial methods and assumptions prescribed by the plan's actuary.

17 J. ~~The following conditions apply to a retired member who becomes an~~
18 ~~employee subsequent to retirement~~ IF A RETIRED MEMBER RETIRES AND THEREAFTER
19 BECOMES REEMPLOYED BY AN EMPLOYER IN A DESIGNATED POSITION, WITHIN TEN DAYS
20 OF REEMPLOYMENT OF A RETIRED MEMBER THE EMPLOYER SHALL NOTIFY THE PLAN OF THE
21 RETIRED MEMBER'S REEMPLOYMENT AND BOTH OF THE FOLLOWING APPLY:

22 1. Payment of the retired member's pension shall be suspended until
23 the retired member again ceases to be an employee. The amount of pension
24 shall not be changed on account of service as an employee subsequent to
25 retirement.

26 2. The retired member shall not contribute to the fund and shall not
27 accrue credited service.

28 Sec. 5. Section 38-885.01, Arizona Revised Statutes, is amended to
29 read:

30 38-885.01. Reverse deferred retirement option plan; purpose

31 A. A reverse deferred retirement option plan is established. The
32 purpose of the reverse deferred retirement option plan is to add flexibility
33 to the plan and to provide members who elect to participate in the reverse
34 deferred retirement option plan access to a lump sum benefit in addition to
35 their normal monthly retirement benefit on actual retirement.

36 B. Beginning on July 1, 2006 through June 30, 2011, the fund manager
37 shall offer the reverse deferred retirement option plan to members on a
38 voluntary basis as an alternative method of benefit accrual under the plan.

39 C. Any member who is eligible for a normal pension pursuant to section
40 38-885, ~~and~~ WHO IS NOT AWARDED AN ACCIDENTAL, ORDINARY OR TOTAL AND PERMANENT
41 DISABILITY PENSION AND who has at least twenty-four years of credited
42 service, OR IN THE CASE OF A DISPATCHER, WHO HAS AT LEAST TWENTY-FIVE YEARS
43 OF CREDITED SERVICE, is eligible to participate in the reverse deferred
44 retirement option plan.

1 D. A member who elects to participate in the reverse deferred
2 retirement option plan shall voluntarily and irrevocably:

3 1. Designate a reverse deferred retirement option plan date that is
4 the first day of the calendar month immediately following a member's
5 completion of twenty-four years of credited service or a date not more than
6 sixty consecutive months before the date the member elects to participate in
7 the reverse deferred retirement option plan, whichever is later.

8 2. Agree to terminate employment on the date the member elects to
9 participate in the reverse deferred retirement option plan.

10 3. Receive benefits from the plan on termination of employment at the
11 same time and in the same manner as otherwise prescribed in this article
12 using the factors of credited service and average monthly salary in effect on
13 the reverse deferred retirement option plan date.

14 E. On election, a reverse deferred retirement option plan
15 participation account is established within the plan on behalf of each
16 reverse deferred retirement option plan participant. All benefits accrued
17 pursuant to this article shall be accounted for in the reverse deferred
18 retirement option plan participation account. A reverse deferred retirement
19 option plan participant does not have a claim on the assets of the plan with
20 respect to the member's reverse deferred retirement option plan participation
21 account and assets shall not be set aside for any reverse deferred retirement
22 option plan participant that are separate from all other system assets.

23 F. All amounts credited to a member's reverse deferred retirement
24 option plan participation account are fully vested.

25 G. A member's reverse deferred retirement option plan participation
26 account shall be credited with the following:

27 1. An amount that is credited as though accrued monthly from the
28 reverse deferred retirement option plan date to the date the member elected
29 to participate in the reverse deferred retirement option plan and that is
30 computed in the same manner as a normal retirement benefit using the factors
31 of credited service and average monthly salary in effect on the reverse
32 deferred retirement option plan date.

33 2. An amount that is credited as though accrued monthly and that
34 represents interest at a rate equal to the yield on a five year treasury note
35 as of the first day of the month as published by the federal reserve board.

36 H. Employee and employer contributions pursuant to section 38-891 that
37 are deposited during the period of the reverse deferred retirement option
38 plan are not eligible to be refunded to the employer or member.

39 I. The participant is not entitled to receive any amount prescribed by
40 section 38-905 or 38-906 during the reverse deferred retirement option plan
41 participation period.

42 J. The form of payment shall be a lump sum distribution. If allowed
43 by the internal revenue service, the participant may elect to transfer the
44 lump sum distribution to an eligible retirement plan or individual retirement
45 account.

1 K. The reverse deferred retirement option plan shall not jeopardize in
2 any way the tax qualified status of the plan under the rules of the internal
3 revenue service. The fund manager may adopt additional provisions to the
4 extent necessary or appropriate for the reverse deferred retirement option
5 plan to comply with applicable federal laws or rules.

6 Sec. 6. Section 38-887, Arizona Revised Statutes, is amended to read:

7 38-887. Pension to surviving spouse of deceased retired member

8 ~~A.~~ The surviving spouse of a deceased retired member is entitled to
9 receive a ~~pension for life if each of the following conditions is met:~~

10 ~~1. The retired member was married to the surviving spouse for at least~~
11 ~~two years at the time of death.~~

12 ~~2. The surviving spouse files with the retirement plan a written~~
13 ~~application for the survivor pension.~~

14 ~~B.~~ The amount of pension paid a surviving spouse is equal to
15 ~~four-fifths of the amount of the retired member's pension at the time of~~
16 ~~death~~ SURVIVING SPOUSE'S PENSION IF THE SPOUSE WAS MARRIED TO THE MEMBER FOR
17 A PERIOD OF AT LEAST TWO CONSECUTIVE YEARS AT THE TIME OF THE MEMBER'S DEATH.
18 PAYMENT OF A SURVIVING SPOUSE'S PENSION COMMENCES AS OF THE LAST DAY OF THE
19 MONTH FOLLOWING THE RETIRED MEMBER'S DATE OF DEATH. THE LAST PAYMENT SHALL BE
20 MADE AS OF THE LAST DAY OF THE MONTH IN WHICH THE SURVIVING SPOUSE'S DEATH
21 OCCURS. THE AMOUNT OF PENSION PAID A SURVIVING SPOUSE IS EQUAL TO
22 FOUR-FIFTHS OF THE AMOUNT OF THE DECEASED RETIRED MEMBER'S PENSION AT THE
23 TIME OF DEATH. THE SURVIVING SPOUSE SHALL FILE A WRITTEN APPLICATION WITH
24 THE PLAN IN ORDER TO RECEIVE THE SURVIVOR BENEFIT.

25 Sec. 7. Section 38-888, Arizona Revised Statutes, is amended to read:

26 38-888. Pension to the surviving spouse of a member

27 A. The surviving spouse of a deceased ~~active~~ member is entitled to
28 receive a ~~pension for life if each of the following conditions is met:~~

29 ~~1. The member was married to the surviving spouse for at least two~~
30 ~~years at the time of death.~~

31 ~~2. The surviving spouse files a written application with the~~
32 ~~retirement plan for the survivor benefit.~~

33 ~~B.~~ SURVIVING SPOUSE'S PENSION IF THE SPOUSE WAS MARRIED TO THE MEMBER
34 ON THE DATE OF THE MEMBER'S DEATH. PAYMENT OF A SURVIVING SPOUSE'S PENSION
35 COMMENCES AS OF THE LAST DAY OF THE MONTH FOLLOWING THE MEMBER'S DATE OF
36 DEATH. THE LAST PAYMENT SHALL BE MADE AS OF THE LAST DAY OF THE MONTH IN
37 WHICH THE SURVIVING SPOUSE'S DEATH OCCURS. The amount of a surviving
38 spouse's pension is forty per cent of the deceased member's average monthly
39 salary. THE SURVIVING SPOUSE SHALL FILE A WRITTEN APPLICATION WITH THE PLAN
40 IN ORDER TO RECEIVE THE SURVIVOR BENEFIT.

41 ~~C.~~ B. The surviving spouse of a deceased member who is killed in the
42 line of duty or dies from injuries suffered in the line of duty is entitled
43 to receive a monthly amount equal to the deceased member's average monthly
44 benefit compensation. For the purposes of this subsection, "killed in the
45 line of duty" means the decedent's death was the direct and proximate result

1 of physical injuries incurred in the performance of the decedent's public
2 safety duties and does not include suicide.

3 Sec. 8. Section 38-891, Arizona Revised Statutes, is amended to read:

4 38-891. Employer and member contributions

5 A. As determined by actuarial valuations reported to the employers and
6 the local boards by the fund manager, each employer shall make level per cent
7 of salary contributions sufficient under the actuarial valuations to meet
8 both the normal cost plus the actuarially determined amount required to
9 amortize the unfunded accrued liability over, beginning July 1, 2005 a
10 rolling period of at least twenty and not more than thirty years that is
11 established by the fund manager taking into account the recommendation of the
12 plan's actuary, except that, beginning with fiscal year 2006-2007, except as
13 otherwise provided, the employer contribution rate shall not be less than six
14 per cent of salary. For any employer whose actual contribution rate is less
15 than six per cent of salary for fiscal year 2006-2007 and each year
16 thereafter, that employer's contribution rate shall be at least five per cent
17 and not more than the employer's actual contribution rate. An employer may
18 pay a higher level per cent of salary thereby reducing its unfunded past
19 service liability. All contributions made by the employers and all state
20 taxes allocated to the fund shall be irrevocable and shall be used to pay
21 benefits under the plan or to pay expenses of the plan and fund. The minimum
22 employer contribution that is paid and that is in excess of the normal cost
23 plus the actuarially determined amount required to amortize the unfunded
24 accrued liability as calculated pursuant to this subsection shall be used to
25 reduce future employer contribution increases and shall not be used to pay
26 for an increase in benefits that are otherwise payable to members. The fund
27 manager shall separately account for these monies in the fund. Forfeitures
28 arising because of severance of employment before a member becomes eligible
29 for a pension or for any other reason shall be applied to reduce the cost to
30 the employer, not to increase the benefits otherwise payable to members.
31 After the close of any fiscal year, if the plan's actuary determines that the
32 actuarial valuation of an employer's account contains excess valuation assets
33 other than excess valuation assets that were in the employer's account as of
34 fiscal year 2004-2005 and is more than one hundred per cent funded, the fund
35 manager shall account for fifty per cent of the excess valuation assets in a
36 stabilization reserve account. After the close of any fiscal year, if the
37 plan's actuary determines that the actuarial valuation of an employer's
38 account has a valuation asset deficiency and an unfunded actuarial accrued
39 liability, the fund manager shall use any valuation assets in the
40 stabilization reserve account for that employer, to the extent available, to
41 limit the decline in that employer's funding ratio to not more than two per
42 cent.

43 B. Except as provided by subsection I, each member shall contribute
44 7.96 per cent of the member's salary to the retirement plan. Member
45 contributions shall be made by payroll deduction. Continuation of employment

1 by the member constitutes consent and agreement to the deduction of the
2 applicable member contribution. Payment of the member's salary less the
3 deducted contributions constitutes full and complete discharge and
4 satisfaction of all claims and demands of the member relating to salary for
5 services rendered during the period covered by the payment.

6 C. Each participating employer shall cause the member contributions to
7 be deducted from the salary of each member. The deducted member
8 contributions shall be paid to the retirement plan within five working days
9 and shall be credited to the member's individual account.

10 D. During a period when an employee is on industrial leave and the
11 employee elects to continue contributions during the period of industrial
12 leave, the employer and employee shall make contributions based on the salary
13 the employee would have received in the employee's job classification if the
14 employee was in normal employment status.

15 E. The local board of the state department of corrections or the local
16 board of the department of juvenile corrections may specify a position within
17 that department as a designated position if the position is filled by an
18 employee who has at least five years of credited service under the plan, who
19 is transferred to temporarily fill the position and who makes a written
20 request to the local board to specify the position as a designated position
21 within ninety days of being transferred. On the employee leaving the
22 position, the position is no longer a designated position. **FOR THE PURPOSES**
23 **OF THIS SUBSECTION, "TEMPORARILY FILLED" MEANS AN EMPLOYEE IS TRANSFERRED TO**
24 **FILL THE POSITION FOR A PERIOD OF NOT MORE THAN ONE YEAR.**

25 F. The local board of the state department of corrections or the local
26 board of the department of juvenile corrections may specify a designated
27 position within the department as a nondesignated position if the position is
28 filled by an employee who has at least five years of credited service under
29 the Arizona state retirement system and who makes a written request to the
30 local board to specify the position as a nondesignated position within ninety
31 days of accepting the position. On the employee leaving the position, the
32 position reverts to a designated position.

33 G. The local board of the judiciary may specify positions within the
34 administrative office of the courts that require direct contact with and
35 primarily provide training or technical expertise to county probation,
36 surveillance or juvenile detention officers as a designated position if the
37 position is filled by an employee who is a member of the plan currently
38 employed in a designated position as a probation, surveillance or juvenile
39 detention officer and who has at least five years of credited service under
40 the plan. An employee who fills such a position shall make a written request
41 to the local board to specify the position as a designated position within
42 ninety days of accepting the position. On the employee leaving the position,
43 the position reverts to a nondesignated position.

44 H. Beginning with fiscal year 2008-2009, if the aggregate computed
45 employer contribution rate that is calculated pursuant to subsection A is

1 less than six per cent of salary, beginning on July 1 of the following fiscal
2 year the member contribution rate prescribed in subsection B or I is
3 permanently reduced by an amount that is equal to the difference between six
4 per cent and the aggregate computed employer contribution rate.
5 Notwithstanding this subsection, the member contribution rate shall not be
6 less than 7.65 per cent of the member's salary.

7 I. Notwithstanding subsection B, except for a full-time dispatcher, a
8 member shall contribute 8.41 per cent of the member's salary to the
9 retirement plan. After the close of any fiscal year, if the plan's actuary
10 determines that the aggregate ratio of the funding value of accrued assets to
11 the accrued liabilities of the fund is at least one hundred per cent, from
12 and after June 30 of the following year, except for a full-time dispatcher, a
13 member shall contribute 7.96 per cent of the member's salary to the
14 retirement plan. Additionally, the member's contribution to the retirement
15 plan may also be permanently reduced pursuant to subsection H.

16 Sec. 9. Section 38-893, Arizona Revised Statutes, is amended to read:

17 38-893. Local boards; powers and duties; rules; hearings;
18 administrative review

19 A. The administration of the plan and the responsibility for making
20 the provisions of the plan effective for each employer are vested in a local
21 board. The state department of corrections, the department of juvenile
22 corrections, the department of public safety, each participating county
23 sheriff's department, each participating city or town, each participating
24 employer of full-time dispatchers for eligible groups as defined in section
25 38-842 and the judiciary shall have a local board. Each local board is
26 constituted as follows:

27 1. For the state departments, two members who are elected by secret
28 ballot by members employed by that department in a designated position and
29 two citizens who are appointed by the governor. The director of each state
30 department shall appoint one member to the local board who is knowledgeable
31 in personnel actions. Each state department local board shall elect a
32 chairman.

33 2. For each participating county, the chairman of the board of
34 supervisors, or the chairman's designee who is approved by the board of
35 supervisors, as chairman, two members who are elected by secret ballot by
36 members employed by the participating county in a designated position and two
37 citizens, one of whom shall be the head of the merit system if it exists for
38 the group of members, who are appointed by the chairman of the board of
39 supervisors with the approval of the board of supervisors.

40 3. For political subdivisions, the mayor or chief elected official or
41 a designee of the mayor or chief elected official approved by the respective
42 governing body as chairman, two members elected by secret ballot by members
43 employed by the appropriate employer and two citizens, one of whom shall be
44 the head of the merit system if it exists for the group of members, appointed

1 by the mayor or chief elected official and with the approval of the city
2 council or governing body of the employer.

3 4. For the judiciary, two members who are elected by secret ballot by
4 members who are employed as a probation, surveillance or juvenile detention
5 officer, a designee of the chief justice of the Arizona supreme court and two
6 citizens, one of whom shall be the head of a human resource department for
7 the group of members, appointed by the chief justice.

8 B. The appointments and elections of local board members shall take
9 place with one elective and one appointive board member, as designated by the
10 appointing authority, serving a term ending two years after the date of
11 appointment or election and the other local board members serving a term
12 ending four years after the date of appointment or election. Thereafter,
13 every second year, and as a vacancy occurs, an office shall be filled for a
14 term of four years in the same manner as provided in this section.

15 C. EACH LOCAL BOARD SHALL BE FULLY CONSTITUTED PURSUANT TO SUBSECTION
16 A OF THIS SECTION WITHIN SIXTY DAYS AFTER THE EMPLOYER'S EFFECTIVE DATE OF
17 PARTICIPATION IN THE PLAN. IF THE DEADLINE IS NOT MET, ON THE WRITTEN
18 REQUEST OF ANY MEMBER WHO IS COVERED BY THE LOCAL BOARD OR THE EMPLOYER TO
19 THE FUND MANAGER, THE FUND MANAGER SHALL APPOINT ALL VACANCIES OF THE LOCAL
20 BOARD PURSUANT TO SUBSECTION A OF THIS SECTION AND DESIGNATE WHETHER EACH
21 APPOINTIVE POSITION IS FOR A TWO YEAR OR FOUR YEAR TERM. IF THE FUND MANAGER
22 CANNOT FIND INDIVIDUALS TO SERVE ON THE LOCAL BOARD WHO MEET THE REQUIREMENTS
23 OF SUBSECTION A OF THIS SECTION, THE FUND MANAGER MAY APPOINT INDIVIDUALS TO
24 SERVE AS INTERIM LOCAL BOARD MEMBERS UNTIL QUALIFIED INDIVIDUALS ARE
25 APPOINTED OR ELECTED. Within ten days after the member's appointment or
26 election, each member of a local board shall take an oath of office that, so
27 far as it devolves on the member, the member shall diligently and honestly
28 administer the affairs of the local board and shall not knowingly violate or
29 willingly permit to be violated any of the provisions of law applicable to
30 the plan.

31 D. Except as limited by subsection E of this section, a local board
32 shall:

33 1. Decide all questions of eligibility and service credits and
34 determine the amount, manner and time of payment of any benefit under the
35 plan.

36 2. Make a determination as to the right of a claimant to a benefit and
37 afford a claimant or the fund manager, or both, a right to a rehearing on the
38 original determination, UNLESS THE FUND MANAGER DETERMINES THAT GRANTING THE
39 RELIEF REQUESTED WOULD VIOLATE THE INTERNAL REVENUE CODE OR THREATEN TO
40 IMPAIR THE PLAN'S STATUS AS A QUALIFIED PLAN UNDER THE INTERNAL REVENUE CODE.
41 IF THE FUND MANAGER DETERMINES THAT GRANTING THE REQUESTED RELIEF WOULD
42 VIOLATE THE INTERNAL REVENUE CODE OR THREATEN TO IMPAIR THE PLAN'S STATUS AS
43 A QUALIFIED PLAN, THE FUND MANAGER MAY REFUSE TO GRANT THE RELIEF BY ISSUING
44 A WRITTEN DETERMINATION TO THE LOCAL BOARD AND THE PARTY PETITIONING THE

1 LOCAL BOARD FOR RELIEF. THE DECISION BY THE FUND MANAGER IS SUBJECT TO
2 JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6.

3 3. Request and receive from the employers and from members information
4 as is necessary for the proper administration of the plan and action on
5 claims for benefits and forward the information to the fund manager.

6 4. Distribute, in the manner the local board determines to be
7 appropriate, information explaining the plan that is received from the fund
8 manager.

9 5. Furnish the employer, the fund manager and the legislature, on
10 request, with annual reports with respect to the administration of the plan
11 that are reasonable and appropriate.

12 6. Appoint a medical board, which is composed of a designated
13 physician or clinic other than the employer's regular employee or contractor.
14 If required, the local board may employ other physicians to report on special
15 cases. The examining physician or clinic shall report the results of
16 examinations made to the local board, and the secretary of the local board
17 shall preserve the report as a permanent record.

18 7. Sue and be sued to effectuate the duties and responsibilities set
19 forth in this article.

20 8. PRESCRIBE PROCEDURES TO BE FOLLOWED BY CLAIMANTS IN FILING
21 APPLICATIONS FOR BENEFITS.

22 9. RECEIVE AND REVIEW THE ACTUARIAL VALUATION OF THE PLAN FOR ITS
23 GROUP OF MEMBERS.

24 10. RECEIVE AND REVIEW REPORTS OF THE FINANCIAL CONDITION AND OF THE
25 RECEIPTS AND DISBURSEMENTS OF THE FUND FROM THE FUND MANAGER.

26 E. A local board has no power to add to, subtract from, modify or
27 waive any of the terms of the plan, change or add to any benefits provided by
28 the plan or waive or fail to apply any requirement of eligibility for
29 membership or benefits under the plan. NOTWITHSTANDING ANY LIMITATIONS
30 PERIODS IMPOSED IN THIS ARTICLE, INCLUDING SUBSECTIONS G AND H OF THIS
31 SECTION, IF THE FUND MANAGER DETERMINES A LOCAL BOARD DECISION VIOLATES THE
32 INTERNAL REVENUE CODE OR THREATENS TO IMPAIR THE PLAN'S STATUS AS A QUALIFIED
33 PLAN UNDER THE INTERNAL REVENUE CODE THE LOCAL BOARD'S DECISION IS NOT FINAL
34 AND BINDING AND THE FUND MANAGER MAY REFRAIN FROM IMPLEMENTING OR COMPLYING
35 WITH THE LOCAL BOARD DECISION.

36 F. A local board, from time to time, shall establish and adopt rules
37 as it deems necessary or desirable for its administration. All rules and
38 decisions of a local board shall be uniformly and consistently applied to all
39 members in similar circumstances.

40 G. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, an action by a
41 majority vote of the members of a local board that is not inconsistent with
42 the provisions of the plan AND THE INTERNAL REVENUE CODE is final, conclusive
43 and binding on all persons affected by it, unless a timely application for a
44 rehearing or appeal is filed as provided in this article. NO LATER THAN
45 TWENTY BUSINESS DAYS AFTER TAKING ACTION, THE LOCAL BOARD SHALL SUBMIT TO THE

1 FUND MANAGER THE NAME OF THE MEMBER AFFECTED BY ITS DECISION, A DESCRIPTION
2 OF THE ACTION TAKEN AND AN EXPLANATION OF THE REASONS SUPPORTING THE LOCAL
3 BOARD'S ACTION. THE FUND MANAGER MAY NOT IMPLEMENT AND COMPLY WITH ANY LOCAL
4 BOARD ACTION THAT DOES NOT COMPLY WITH THE INTERNAL REVENUE CODE OR THAT
5 THREATENS TO JEOPARDIZE THE PLAN'S STATUS AS A QUALIFIED PLAN UNDER THE
6 INTERNAL REVENUE CODE.

7 H. A claimant or the fund manager may apply for a rehearing before the
8 local board within the time ~~period~~ PERIODS prescribed in this subsection,
9 EXCEPT THAT IF A DECISION OF A LOCAL BOARD VIOLATES THE INTERNAL REVENUE CODE
10 OR THREATENS TO JEOPARDIZE THE PLAN'S STATUS AS A QUALIFIED PLAN UNDER THE
11 INTERNAL REVENUE CODE, NO LIMITATION PERIOD FOR THE FUND MANAGER TO SEEK A
12 REHEARING OF A LOCAL BOARD DECISION APPLIES. A claimant or the fund manager
13 shall file an application for rehearing in writing with a member of the local
14 board or its secretary within sixty days after:

15 1. The claimant receives notification of the local board's original
16 action by certified mail, by attending the meeting at which the action is
17 taken or by receiving benefits from the plan pursuant to the local board's
18 original action, whichever occurs first.

19 2. The fund manager receives notification of the local board's
20 original action AS PRESCRIBED BY SUBSECTION G OF THIS SECTION by certified
21 mail ~~or by receipt of written directions from the local board pursuant to its~~
22 ~~original action, whichever occurs first.~~

23 I. A hearing before a local board on a matter remanded from the
24 superior court is not subject to a rehearing before the local board.

25 J. Decisions of local boards are subject to judicial review pursuant
26 to title 12, chapter 7, article 6.

27 K. When making a ruling, determination or calculation, the local board
28 is entitled to rely on information furnished by the employer, the fund
29 manager, independent legal counsel or the actuary for the plan.

30 L. Each member of a local board is entitled to one vote. A majority
31 ~~of the appointed and elected members~~ is necessary for a decision by the
32 members of a local board at any meeting of the local board.

33 M. The local board shall adopt bylaws as it deems necessary. The
34 local board shall elect a secretary who may, but need not, be a member of the
35 local board. The secretary of the local board shall keep a record and
36 prepare minutes of all meetings, forward the minutes to the fund manager
37 within forty-five days after each meeting and forward all necessary
38 communications to the fund manager.

39 N. The employer AND NOT THE FUND MANAGER OR PLAN shall pay the fees of
40 the medical board and of the local board's legal counsel and all other
41 expenses of the local board necessary for the administration of the plan at
42 rates and in amounts as the local board approves.

1 O. The local board shall issue directions to the fund manager
2 concerning all benefits that are to be paid from the employer's account
3 pursuant to the provisions of the fund. The local board shall keep on file,
4 in the manner it deems convenient and proper, all reports from the fund
5 manager and the actuary.

6 P. The local board and the individual members of the local board are
7 indemnified from the assets of the fund ~~against any liability arising by~~
8 ~~reason of~~ FOR ANY JUDGMENT AGAINST THE LOCAL BOARD OR ITS MEMBERS, INCLUDING
9 ATTORNEY FEES AND COSTS, ARISING FROM any act, or failure to act, made in
10 good faith pursuant to the provisions of the plan.

11 Sec. 10. Section 38-904, Arizona Revised Statutes, is amended to read:

12 38-904. Death benefits; amount

13 A. If an active or inactive member dies and no pension is payable on
14 account of the member's death, an amount equal to two times the member's
15 accumulated contributions to the retirement plan is payable to the person
16 designated by the deceased member in writing and filed with the fund manager.
17 If the designated person or persons do not survive the deceased member, the
18 payment is payable to the estate of the deceased member. For the purposes of
19 this subsection, "inactive member" means a person who previously made
20 contributions to the plan, who has not retired, who is not currently making
21 contributions to the plan and who has not withdrawn contributions from the
22 plan.

23 B. If the deceased retired or active member does not have an eligible
24 surviving spouse or the pension of the eligible surviving spouse is
25 terminated, each ~~surviving unmarried child of the deceased retired or active~~
26 ~~member~~ ELIGIBLE CHILD is entitled to a CHILD'S pension ~~which terminates on~~
27 ~~adoption or the attainment of eighteen years of age unless the child is a~~
28 ~~full-time student under twenty-three years of age or the child is under a~~
29 ~~disability which began before the child attained the age of twenty-three~~
30 ~~years~~. A CHILD'S PENSION TERMINATES IF THE CHILD IS ADOPTED. IN THE CASE OF
31 A DISABLED CHILD, THE CHILD'S PENSION TERMINATES IF THE CHILD CEASES TO BE
32 UNDER A DISABILITY OR CEASES TO BE A DEPENDENT OF THE SURVIVING SPOUSE OR
33 GUARDIAN. The amount of the pension of each ~~surviving child of a deceased~~
34 ~~retired or active member~~ ELIGIBLE CHILD is an equal share of the amount of
35 the surviving spouse's pension. The fund manager shall pay the surviving
36 minor OR DISABLED child's pension to the person who is the legally appointed
37 guardian or custodian of the eligible child.

38 Sec. 11. Title 38, chapter 5, article 6, Arizona Revised Statutes, is
39 amended by adding sections 38-911 and 38-912, to read:

40 38-911. Deferred annuity; eligibility; amount

41 IF ANY MEMBER WHO HAS AT LEAST TEN YEARS OF CREDITED SERVICE TERMINATES
42 EMPLOYMENT FOR REASONS OTHER THAN RETIREMENT OR DISABILITY, THE PERSON MAY
43 ELECT TO RECEIVE A DEFERRED ANNUITY, EXCEPT THAT IF THE PERSON WITHDRAWS THE
44 PERSON'S ACCUMULATED CONTRIBUTIONS FROM THE PLAN, ALL RIGHTS TO A DEFERRED
45 ANNUITY ARE FORFEITED. A DEFERRED ANNUITY IS A LIFETIME MONTHLY PAYMENT THAT

1 IS ACTUARIALLY EQUIVALENT TO THE ANNUITANT'S ACCUMULATED CONTRIBUTIONS IN THE
2 PLAN PLUS AN EQUAL AMOUNT PAID BY THE EMPLOYER AND COMMENCES ON APPLICATION
3 ON OR AFTER THE SIXTY-SECOND BIRTHDAY OF THE ANNUITANT. THE DEFERRED ANNUITY
4 IS NOT A RETIREMENT BENEFIT AND ANNUITANTS ARE NOT ENTITLED TO RECEIVE ANY
5 AMOUNT PRESCRIBED BY SECTION 38-887, 38-888, 38-904, 38-905 OR 38-906.

6 38-912. Civil liability; restitution or payment of fine;
7 violation; classification; offset of benefits

8 A. A PERSON WHO DEFRAUDS THE PLAN OR WHO TAKES, CONVERTS, STEALS OR
9 EMBEZZLES MONIES OWNED BY OR FROM THE PLAN AND WHO FAILS OR REFUSES TO RETURN
10 THE MONIES TO THE PLAN ON THE FUND MANAGER'S WRITTEN REQUEST IS SUBJECT TO
11 CIVIL SUIT BY THE PLAN IN THE SUPERIOR COURT IN MARICOPA COUNTY. ON ENTRY OF
12 AN ORDER FINDING THE PERSON HAS DEFRAUDED THE PLAN OR TAKEN, CONVERTED,
13 STOLEN OR EMBEZZLED MONIES OWNED BY OR FROM THE PLAN, THE COURT SHALL ENTER
14 AN ORDER AGAINST THAT PERSON AND FOR THE PLAN AWARDING THE PLAN ALL OF ITS
15 COSTS AND EXPENSES OF ANY KIND, INCLUDING ATTORNEY FEES, THAT WERE NECESSARY
16 TO SUCCESSFULLY PROSECUTE THE ACTION. THE COURT SHALL ALSO GRANT THE PLAN A
17 JUDICIAL LIEN ON ALL OF THE NONEXEMPT PROPERTY OF THE PERSON AGAINST WHOM
18 JUDGMENT IS ENTERED PURSUANT TO THIS SUBSECTION IN AN AMOUNT EQUAL TO ALL
19 AMOUNTS AWARDED TO THE PLAN, PLUS INTEREST AT THE RATE PRESCRIBED BY SECTION
20 44-1201, SUBSECTION A, UNTIL ALL AMOUNTS OWED ARE PAID TO THE PLAN.

21 B. IF A MEMBER IS CONVICTED OF, OR DISCHARGED BECAUSE OF, THEFT,
22 EMBEZZLEMENT, FRAUD OR MISAPPROPRIATION OF AN EMPLOYER'S PROPERTY OR PROPERTY
23 UNDER THE CONTROL OF THE EMPLOYER, THE MEMBER IS SUBJECT TO RESTITUTION AND
24 FINES IMPOSED BY A COURT OF COMPETENT JURISDICTION. THE COURT MAY ORDER THE
25 RESTITUTION OR FINES TO BE PAID FROM ANY PAYMENTS OTHERWISE PAYABLE TO THE
26 MEMBER FROM THE PLAN.

27 C. A PERSON WHO KNOWINGLY MAKES ANY FALSE STATEMENT OR WHO FALSIFIES
28 OR PERMITS TO BE FALSIFIED ANY RECORD OF THE PLAN WITH AN INTENT TO DEFRAUD
29 THE PLAN IS GUILTY OF A CLASS 6 FELONY. IF ANY CHANGE OR ERROR IN THE
30 RECORDS RESULTS IN ANY MEMBER OR BENEFICIARY RECEIVING FROM THE PLAN MORE OR
31 LESS THAN THE MEMBER OR BENEFICIARY WOULD HAVE BEEN ENTITLED TO RECEIVE HAD
32 THE RECORDS BEEN CORRECT, THE LOCAL BOARD SHALL CORRECT THE ERROR, AND AS FAR
33 AS PRACTICABLE SHALL ADJUST THE PAYMENTS IN A MANNER THAT THE ACTUARIAL
34 EQUIVALENT OF THE BENEFIT TO WHICH THE MEMBER OR BENEFICIARY WAS CORRECTLY
35 ENTITLED SHALL BE PAID. IF A MEMBER IS CONVICTED OF A CRIME PURSUANT TO THIS
36 SUBSECTION THE MEMBER IS ENTITLED TO RECEIVE A LUMP SUM PAYMENT OF THE
37 MEMBER'S ACCUMULATED CONTRIBUTIONS BUT FORFEITS ANY FUTURE COMPENSATION AND
38 BENEFITS THAT WOULD OTHERWISE ACCRUE TO THE MEMBER OR THE MEMBER'S ESTATE
39 UNDER THIS ARTICLE.

40 D. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE FUND
41 MANAGER MAY OFFSET AGAINST ANY BENEFITS OTHERWISE PAYABLE BY THE PLAN TO A
42 MEMBER OR SURVIVOR ANY COURT ORDERED AMOUNTS AWARDED TO THE FUND MANAGER AND
43 PLAN AND ASSESSED AGAINST THE MEMBER OR SURVIVOR.

1 Sec. 12. Conditional enactment

2 Section 38-881, Arizona Revised Statutes, as amended by Laws 2008,
3 chapter 144, section 2 and chapter 185, section 2 and section 2 of this act,
4 becomes effective on the date prescribed in Laws 2005, chapter 324, section 2
5 but only on the occurrence of the condition prescribed by Laws 2005, chapter
6 324, section 2.